IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2564 of 2006
with
FIRST APPEAL No. 2565 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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EXECUTIVE ENGINEER & ANR. - Appellant(s)
Versus
DESAI TAKHIBEN SANKABHAI D/O.SANKABHAI - Defendant(s)

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Appearance :
MR SS PATEL, AGP for Appellant(s) : 1 - 2.
MR AJ PATEL for Respondent(s)-Claimant(s)

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 01/08/2006

ORAL JUDGMENT (Per:HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of Notice on behalf of the claimant/ claimants in each Appeal. Having regard to the facts of the case, the Appeals are taken up for final disposal today.

2. By filing these two Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of the judgment and award dated February 25, 2005, rendered by the learned Civil Judge (S.D.), Mehsana, in Land Reference Case Nos.5369 of 2003 and 5370 of 2003 by which, the Reference Court has granted to the claimants, additional compensation at the rate of Rs.57.60 ps. per sq.mt. for their acquired lands over and above the compensation awarded to them by

the Special Land Acquisition Officer at the rate of Rs.2.40 per sq.mt.

3. A proposal was received by the State Government to acquire Survey No.79/A belonging to the respondent in First Appeal No.2564 of 2006 and Survey Nos.75/A/1 and 75/1/2 belonging to the respondents in First Appeal No.2565 of 2006, situated at Village Dudhai, Taluka: Kadi, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the abovereferred to lands were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Act was issued which was published in the official gazette on December 7, 1999. Thereafter, the land owners were served with notices as required by Section 4 of the Act. They filed objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded

his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Dudhai which were specified in the Notification published under Section 4(1) of the Act, were needed for the public purpose of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on May 9, 2000. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.41/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.2.40/- per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer

was totally inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the matter to Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Mehsana, where they were registered as Land Reference Case Nos.5369 and 5370 of 2003.

4. On behalf of the claimants, witness Ramjibhai Mevabhai Rabari was examined at Ex.20. It was stated by the said witness that each claimant was growing crops of cotton, Juvar, Millet, wheat, etc. on his land and that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per Vigha per year. According to the said witness, the lands were even and highly fertile and therefore, the claimants were entitled to enhanced compensation. It was also claimed by him that earlier from this very village, lands were acquired wherein,

the High Court had granted compensation at the rate of Rs.26.60 ps. per sq.mt. with reference to the publication of Notification under Section 4(1) of the Act on April 19, 1991, and on the basis of said decision, the claimants should be granted enhanced compensation. This witness was cross-examined by the Special Land Acquisition Officer as well as the Government. Though it was admitted by him that the lands acquired were known as Khakhariya-Tappa, the suggestion made to the witness that the growing of crops was dependent upon rains was emphatically denied by him. The suggestion made to the witness that lands of village Shiyapur were also acquired for the said purpose was admitted by him. On behalf of the acquiring authorities, witness Dilipbhai Damodardas Pandya was examined at Ex.17. It was maintained by the said witness in his testimony that before determining the market value of the lands acquired, the Special Land Acquisition Officer had taken

into consideration all the relevant factors. However, in cross-examination, he had to admit that he had no personal knowledge regarding acquisition of lands from village Dudhai and that he had not even seen the acquired lands.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court rendered in Land Acquisition Reference No.500 to 515 of 1998 on June 23, 2000, as modified by the High Court vide judgment dated July 15, 2003, rendered in First Appeals No.1749 to 1764 of 2002 was relevant and furnished good guidance for the purpose of determining the market value of acquired lands in the instant case. After placing reliance on the previous award, the learned Judge held that in view of the time gap between publications of Notifications issued under Section 4(1) of the Act in the earlier case and in the instant case, the

claimants would be entitled to rise in price of lands cumulatively at the rate of 10% per year. In the ultimate analysis, the Reference court has awarded in all, compensation to the claimants at the rate of Rs.60/- per sq.mt. by the impugned award giving rise to the abovenumbered Appeals.

6. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned counsel for the claimant/ claimants in each Appeal. This Court has also considered the documentary evidence produced by the learned counsel for the parties for perusal of the Court.

7. From the record of the case, it is evident that though it was claimed by the witness of the claimants that each claimant was earning the net profit of Rs.35,000/- to Rs.40,000/- per year per Vigha, the said claim could not be substantiated by leading reliable

evidence. The record does not indicate that any sale-deed was relied upon by the claimants in support of their claim for enhanced compensation nor the enhanced compensation was claimed on yield basis. Similarly, no evidence was adduced by the acquiring authorities to substantiate their claim that the claimants were not entitled to more compensation than what was offered to them by the Special Land Acquisition Officer. However, it is an admitted position that the claimants relied upon the previous award of the Reference Court with respect to the lands of this very village which was rendered in Land Acquisition Reference Nos.500 to 515 of 1998 on June 23, 2000. It indicated that therein the lands of village Dudhai were acquired for public purpose of Narmada Canal pursuant to publication of Notification issued under Section 4(1) of the Act in the official gazette on April 19, 1991. Therein, the Reference Court had awarded compensation to the claimants at the

rate of Rs.28/- per sq.mt. A copy of the award rendered by the Reference Court in Land Acquisition Reference Nos.500 to 515 of 1998 is produced by the claimants at Ex.24. Feeling aggrieved by the said award of the Reference Court, the Special Land Acquisition Officer and the acquiring body had preferred First Appeal Nos.1749 to 1764 of 2002. The judgment rendered by the High Court was produced by the claimants at Ex.25. It indicates that the appeals filed by the acquiring authorities were partly allowed by the High Court vide judgment dated July 15, 2003 and the compensation payable to the claimants was reduced to Rs.26.60 ps. per sq.mt. It is well settled that the previous award of the Reference Court relating to the lands of the same village which has attained finality can be relied upon for the purpose of ascertaining the market value of the lands acquired from the said village subsequently. Under the circumstances, this Court is of the opinion

that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of this very village rendered in Land Acquisition Reference Nos.500 to 515 of 1998, as modified by the High Court vide judgment dated July 15, 2003, rendered in First Appeals No.1749 to 1764 of 2002, for the purpose of ascertaining the market value of the lands acquired in the instant case. The only error committed by the learned Judge while computing compensation payable to the claimants in the instant case on the basis of the previous award is that the learned Judge granted rise in price of lands to the claimants cumulatively at the rate of 10% per year. The Supreme Court has authoritatively ruled that though the market value of the land acquired cannot be freezed at the rate fixed for the similar land acquired earlier and that increase in price of land should be granted to the claimant at the rate of 10% p.a., the claimant would not

be entitled to increase in price of the land cumulatively at the rate of 10% per year. Therefore, this Court is of the opinion that the learned Judge was not justified in awarding compensation to the claimants in all at the rate of Rs.60/- per sq.mt. The learned counsel for the parties have agreed before this Court, on the basis of principle that the claimants would be entitled to reasonable rise in price of lands at the flat rate of 10% p.a., the claimants would be entitled to Rs.50/- per sq.mt. and not Rs.60/- per sq.mt., as held by the Reference Court. Therefore, the Appeals filed by the appellants will have to be allowed in part.

8. For the foregoing reasons, the Appeals partly succeed. It is held that the claimants would be entitled to compensation at the rate of Rs.50/- per sq.mt. and not at the rate of Rs.60/- per sq.mt., as held by the Reference Court vide judgment and award dated February 25, 2005, rendered by the

learned Civil Judge (S.D.), Mehsana, in Land Acquisition Reference No.5369 and 5370 of 2003. Rest of the directions contained in the impugned award are not interfered with at all and are hereby upheld. The Appeals are allowed to the extent indicated hereinabove. There shall be no order as to costs. The Registry is directed to draw the decree in terms of this Judgment.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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